

1 DONALD R. BROWN (Bar No. CA 156548)
E-mail: dbrown@manatt.com
2 CARL L. GRUMER (Bar No. CA 066045)
E-mail: cgrumer@manatt.com
3 MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
4 Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
5 Facsimile: (310) 312-4224
6 JONATHAN I. BLACKMAN (*Pro Hac Vice to be filed*)
E-mail: jblackman@cgsh.com
7 CARMINE D. BOCCUZZI (*Pro Hac Vice to be filed*)
E-mail: cboccuzzi@cgsh.com
8 MICHAEL M. BRENNAN (*Pro Hac Vice to be filed*)
E-mail: mbrennan@cgsh.com
9 CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
10 New York, NY 10006
Telephone: (212) 225-2000
11 Facsimile: (212) 225-3999
12 Attorneys for *Defendant*
THE REPUBLIC OF ARGENTINA
13

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT
16

17 NML CAPITAL, LTD.,

No. 14 CV 02262-SVW-Ex

18 Plaintiff,

[Hon. Stephen V. Wilson]

19 vs.

20 SPACE EXPLORATION
TECHNOLOGIES CORP., aka
21 SPACEX, a Delaware corporation;
THE REPUBLIC OF ARGENTINA, a
22 foreign state, including its *COMISIÓN
NACIONAL DE ACTIVIDADES
ESPACIALES*, aka CONAE, a political
23 subdivision of the Argentine State; and
DOES 1-10,
24

25 Defendants.

26
27
28

NOTICE OF MOTION AND
MOTION BY THE REPUBLIC OF
ARGENTINA TO DISMISS
COMPLAINT UNDER F.R.C.P.
12(b)(1) AND (6); MEMORANDUM
OF POINTS AND AUTHORITIES

[Filed concurrently with Declarations of
Conrado F. Varotto and Donald R.
Brown]

Hearing Date: June 30, 2014
Time: 1:30 p.m.
Courtroom: 6

Compl. filed: March 25, 2014

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 30, 2014, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 6 of the United States
4 Courthouse, 312 N. Spring Street, Los Angeles, California, defendant the Republic
5 of Argentina (the “Republic”) will, and hereby does, move under Federal Rules of
6 Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the Complaint of plaintiff NML
7 Capital, Ltd. (“NML”) with prejudice on the following grounds.

8 First, NML’s Complaint, which seeks to apply toward the satisfaction of
9 NML’s judgments against the Republic the purported rights in a launch services
10 contract of the Republic’s space agency, Comisión Nacional de Actividades
11 Espaciales (“CONAE”), does not adequately allege that CONAE, an “agency or
12 instrumentality” under the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C.
13 Section 1603(b), is liable for the Republic’s debts or that an exception to CONAE’s
14 jurisdictional immunity exists. Second, even if CONAE were liable for the
15 Republic’s debts and subject to jurisdiction here, the Complaint fails to allege the
16 existence of any CONAE property that is subject to execution under FSIA Section
17 1610(a), *i.e.*, CONAE property in the United States that CONAE is using for a
18 commercial activity in the United States. The Complaint thus fails to allege a basis
19 for the Court to award NML its requested relief.

20 This Motion is made following the conference of counsel pursuant to
21 L.R. 7-3 that took place May 8 and 12, 2014. During that conference, the parties
22 discussed the grounds for this Motion, and NML’s counsel indicated that they
23 would oppose the relief requested.

24 This Motion is based upon this Notice of Motion and Motion, the
25 attached Memorandum of Points and Authorities, NML’s Complaint, the
26 concurrently filed Declarations of Conrado F. Varotto and Donald R. Brown and
27 the exhibits thereto, and all such further oral and documentary evidence and
28 argument as may be presented to the Court at or before the hearing on this motion.

1 Dated: May 15, 2014
2

MANATT, PHELPS & PHILLIPS, LLP

3 By: /s/ Donald R. Brown
4

Donald R. Brown
5 Attorneys for *Defendant*
THE REPUBLIC OF ARGENTINA

6 CLEARY GOTTLIEB STEEN &
7 HAMILTON LLP
8 Jonathan I. Blackman
Carmine D. Boccuzzi
Michael M. Brennan
9 Attorneys for *Defendant*
THE REPUBLIC OF ARGENTINA

10
11
12 312250420.1
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28